

U.S. DISTRICT COURT
DISTRICT OF VERMONT
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3. Defendants, working in concert with each other, developed an advertising and promotional campaign for the JEEP Patriot vehicle that uses CHOOSE YOUR ADVENTURE in print, radio, television and Internet advertising.

4. Chooseco has not granted Defendants a license to use its famous trademark. Despite having full notice of Chooseco's established rights in the CHOOSE YOUR OWN ADVENTURE mark by virtue of the numerous Federal trademark registrations and pending applications for CHOOSE YOUR OWN ADVENTURE, Defendants are using CHOOSE YOUR ADVENTURE for an advertising and promotional campaign directed at the same consumers as CHOOSE YOUR OWN ADVENTURE. As more fully set forth herein, the consuming public is immediately associating Defendant's CHOOSE YOUR ADVENTURE advertising and promotional campaign with Chooseco's CHOOSE YOUR OWN ADVENTURE.

5. Defendants are infringing Chooseco's valuable trademark. They are causing confusion, tarnishing, denigrating, and diluting the distinctive quality of the CHOOSE YOUR OWN ADVENTURE brand. These acts are misleading the public and diminishes the valuable good will represented by the CHOOSE YOUR OWN ADVENTURE brand.

JURISDICTION AND VENUE

6. Chooseco is a limited liability company organized and existing under the laws of the State of Vermont, having its principal place of business in Waitsfield, Vermont.

7. Upon information and belief DaimlerChrysler AG is the merged entity of the 1998 merger of Daimler-Benz AG and Chrysler Corporation, a Delaware

Corporation, having its official United States mailing address, as per the records of the Securities and Exchange Commission, at 1000 Chrysler Drive, Auburn Hills, Michigan 48326-2766 (hereinafter collectively referred to as “Defendant DaimlerChrysler”).

8. Chrysler Corporation, also known as both Jeep-Chrysler as well as DaimlerChrysler in the United States, and is the corporation within Defendant DaimlerChrysler and the DaimlerChrysler group of companies that conducts business in the United States, and in the State of Vermont.

9. Defendant DaimlerChrysler owns and operates vehicle-manufacturing plants throughout the United States and elsewhere.

10. Defendant DaimlerChrysler sells many brands of vehicles in the United States

11. Defendant DaimlerChrysler sells JEEP branded vehicles.

12. Defendant DaimlerChrysler sells its JEEP branded vehicles throughout the State of Vermont including having dealerships in the following nine towns and cities in the State of Vermont: South Burlington, St. Albans, Waterbury, Middlebury, Montpelier, Rutland, East Dorset, Springfield, and Brattleboro. Defendant DaimlerChrysler has sold and continues to sell its JEEP branded vehicles throughout the State of Vermont.

13. Defendant DaimlerChrysler has registered its JEEP trademark in many classes in the United States Patent and Trademark Office, including classes 9, 16, 25, 28 & 41.

14. Upon information and belief, BBDO Detroit Inc. is a Delaware corporation having offices in Troy, Michigan (hereinafter “Defendant BBDO”). Upon information and belief Defendant BBDO is a subsidiary of BBDO Worldwide, Inc., a

New York corporation. Upon information and belief either or both BBDO Worldwide, Inc. and BBDO Detroit Inc. are subsidiaries of the corporation Omnicom Group, Inc., a New York corporation.

15. Upon information and belief, Organic, Inc. is a Delaware corporation having offices in San Francisco, California. (hereinafter "Defendant Organic"). Upon information and belief Defendant Organic is a subsidiary of the corporation Omnicom Group, Inc., a New York corporation.

16. Upon information and belief, Marvel Entertainment, Inc. is a Delaware corporation having offices in New York. (hereinafter "Defendant Marvel").

17. Upon information and belief, Defendant BBDO is the lead advertising agency for Defendant DaimlerChrysler and in its capacity as the lead advertising agency is responsible for the development and coordination of multi-media advertising, including: radio, television, Internet, and print advertisements for the JEEP Patriot product line.

18. Upon information and belief, Defendant BBDO, Defendant Organic, and Defendant Marvel working in concert with each for and on behalf of Defendant DaimlerChrysler created the newly developed advertising campaign for the JEEP Patriot using CHOOSE YOUR ADVENTURE.

19. This is an action for trademark infringement, unfair competition, false designation of origin and dilution arising under the Trademark Act of 1946, 15 U.S.C. §§1051, *et. seq.*, as amended (the "Lanham Act") and for unfair competition and conspiracy under the laws of the State of Vermont. This Court has subject matter

jurisdiction over the claims alleged under the Lanham Act pursuant to 15 U.S.C. §1121, 28 U.S.C. §§ 1331, 1338(a), 1338(b) and the principles of pendant jurisdiction.

20. This Court has personal jurisdiction over Defendants in that Defendants do business in this district and offer to sell and have sold infringing merchandise, operate websites accessible in this district, and engage in the promotional activities alleged herein throughout the district in violation of the Lanham Act.

21. Venue is proper in this district by virtue of 28 U.S.C. § 1391(b).

22. As shown herein, throughout this District, Defendants are collectively and cooperatively engaged in an advertising campaign titled CHOOSE YOUR ADVENTURE promoting and selling JEEP Patriot vehicles.

BACKGROUND FACTS

23. R. A. Montgomery, a principal of Chooseco, is the world-renowned author of the book series CHOOSE YOUR OWN ADVENTURE, a series of books that was originally published by Bantam Books, and then by its successors. As of this date, all rights in and to the CHOOSE YOUR OWN ADVENTURE book series have reverted.

24. The CHOOSE YOUR OWN ADVENTURE book series is internationally renowned, has received numerous industry accolades, has sold in excess of several hundred million copies and has been translated into 38 different languages. The series uniquely places “you” the reader at the center of the story permitting “you” the reader to interactively select choices that result in many different endings to each of the books. It is this type of interactivity that made CHOOSE YOUR OWN ADVENTURE famous and so widely known.

25. Chooseco is the owner of the entire right, title and interest in and to the following federal trademarks for CHOOSE YOUR OWN ADVENTURE:

a. United States Registration No. 2807473 for CHOOSE YOUR OWN ADVENTURE issued on January 20, 2004 for: A series of fiction books for young adults; magazines and newsletters for young adults about a series of fiction books; comic books in International Class 16. The Certificate of Registration No. 2807473 is attached as Exhibit 1.

b. United States Registration No. 2913403 for CHOOSE YOUR OWN ADVENTURE issued on December 21, 2004 for: Books, graphic novels and comic books featuring multiple choice, multiple ending fiction stories that are recorded on CD's, DVD's or are downloaded from global computer networks; prerecorded vinyl records, audio tapes, audio-video tapes, audio video cassettes, audio video discs, and digital versatile discs featuring music, comedy, drama, action, events, and/or animation; audio cassette players, CD players, DVD players, mini-disk players; CD ROM games; CD-ROM, DVD and Internet game consoles; short motion picture film cassettes featuring comedy, drama, action, events and/or animation to be used with hand-held viewers or projectors; video cassette recorders and players, compact disc players, digital audio tape recorders and players; audio tapes, video tapes, CD's, DVD's and books, booklets, pamphlets, and newsletters sold as a unit featuring multiple choice, multiple ending fiction stories; computer programs, namely, software linking digitized video and audio media to a global computer information network; game equipment sold as a unit for playing a computer game; video and computer game programs; video game cartridges and

cassettes; electronic games, and serialized publications, namely interactive multiple choice, multiple ending stories and games delivered on optical discs, DVD, and CD-ROM; motion picture films featuring comedy, drama, action, events or animation in International Class 9. The Certificate of Registration No. 2913403 is attached as Exhibit 2.

c. United States Registration No. 2905158 for CHOOSE YOUR OWN ADVENTURE in Logo issued on November 23, 2004 for: Series of fiction books for young adults; magazines and newsletters for young adults about a series of fiction books; comic books in International Class 16. The Certificate of Registration No. 2905158 is attached as Exhibit 3.

d. United States pending Application No. 78269507 for CHOOSE YOUR OWN ADVENTURE filed July 1, 2003, first use in commerce, September 15, 2006 for: Production of television programs, motion picture theatrical films, live-action comedy, drama, events and/or animated films; live theatrical performances; providing information about motion picture films via global computer network; entertainment services, namely, providing on-line non-downloadable computer games, electronic games, and serialized publications, namely interactive multiple choice, multiple ending stories and games delivered by Video on Demand, Digital Video Recorder, cable, terrestrial, and satellite television; providing online non-downloadable books, graphic novels and comic books featuring multiple choice, multiple ending fiction stories provided on global computer networks in International Class 41. The Certificate of Registration is expected to issue within the next several months for Application No. 78269507.

e. United States pending Application No. 78378045 for CHOOSE YOUR OWN ADVENTURE filed March 3, 2004 for: Action figures and accessories therefor; Action skill games; Action toys, namely mechanical, electrical, and battery operated; Amusement game machines; Arcade games; Arcade-type electronic education video games; Bean bag dolls; Bingo game playing equipment; Card games; Children's multiple activity toys; Collectable toy figures; Dice; Dolls and accessories therefor; Electronic educational game machines for children; Equipment sold as a unit for playing memory games, board games and card games; Hand held unit for playing electronic games and video games; Infant toys; Inflatable toys; LCD game machines; Manipulative games and puzzles; Mechanical action toys; Mechanical toys; Party favors in the nature of small toys; Party games; Play figures; Playing card cases; Playing cards; Playsets for dolls; Plush toys; Role playing game equipment in the nature of game book manuals; Role playing games; Soft sculpture dolls, and plush toys; Squeeze toys; Stand alone video game machines; Stuffed toys; Talking toys; Target games; Toy figures, toy animals and accessories therefor; Stand alone video output game machines; Wind-up toys in International Class 28.

f. United States pending Application No. 78378036 for CHOOSE YOUR OWN ADVENTURE filed March 3, 2004, first used in commerce, January 18, 2006 for: Clothing and apparel for men, women, young adults, children and infants, namely bandannas, baseball caps, bathrobes, beach cover-ups, belts, body suits, boots, bow ties, coats, embroidered caps, embroidered shirts, footwear, gloves, hats, head bands, headwear, jackets, jeans, jerseys, jumpsuits, knitted hats,

lounge wear, neckwear, night shirts, overcoats, pajamas, pants, parkas, rain coats, robes, sandals, scarves, shirts, shoes, shorts, sleepwear, slippers, sneakers, socks, sport shirts, suits, suspenders, sweaters, sweatpants, sweatshirts, swimsuits, tank tops, tee shirts, ties, top coats, undergarments, underpants, undershirts, underwear, vests, warm-up suits; Infantwear in International Class 25. The Certificate of Registration is expected to issue within the next several months for Application No. 78378036.

g. Chooseco has registered its trademark CHOOSE YOUR OWN ADVENTURE in classes 9 (electronic products), and 16 (printed materials), will shortly be issued registrations in classes 25 (clothing) and 41 (entertainment services), and has a pending application for its mark in class 28 (toys and games).

26. Chooseco is publishing books in the CHOOSE YOUR OWN ADVENTURE series and at present has eighteen titles that it is selling to the general public through book stores, mass merchant merchandisers, wholesale clubs, regional and national chain book stores, toy stores and other specialty markets. Attached as Exhibit 4 are the covers for each of the 18 titles. Within the last year, Chooseco has printed in excess of one million copies of books distributed in the United States. The target demographic for these books is primarily directed at children in the 9 to 12 year-old age range.

27. Chooseco owns and operates a consumer website *cyoa.com* where it provides interactive games, information about its products, the authors, artists and persons involved in the creation and production of the books as well as sells its books. Additional functions exist for people to sign up for newsletters and become a part of Club

Chooseco because CHOOSE YOUR OWN ADVENTURE is often abbreviated as “cyoa” coupled with the fact that short domain names are preferred for Internet domain names. Attached as Exhibit 5 is the *cyoa.com* main page.

28. Chooseco is in the process of releasing four titles in May that will be the full color books sold under the CHOOSE YOUR OWN ADVENTURE brand. Attached as Exhibit 6 are the covers for each of the 4 titles being released in Spring 2007. The target demographic for these books is primarily directed at children in the 7 to 9 year-old age range.

29. Chooseco’s publishing plans include the release of approximately one title per month over the course of the remainder of 2007 with an expected total of thirty different titles in print by the end of 2007. This includes the planned release of a new series aimed at the 12-14 year-old age range.

30. When the CHOOSE YOUR OWN ADVENTURE books were originally published by Bantam Books, and then its successors, the children reading those books at the time ranged from approximately 7 to 14 year-olds. The sales of the series was strong within the first two years of its launch and by 1983 there were many titles in the series with cumulative sales over 1 million copies. Based upon the information available to Chooseco, the age range of children who actively read the series during this period of time now range from 20 to 38 year-olds. It is this target audience that Chooseco has effectively focused its efforts on as the “nostalgia” buyer for their own children.

31. Chooseco entered into licensing agreements for the publication of thirty-six books in the CHOOSE YOUR OWN ADVENTURE series for the educational marketplace with Sundance/Newbridge Educational Publishing, LLC of Northborough

Massachusetts (hereinafter "Sundance"). Sundance has been actively marketing the first eighteen titles since mid-2005, and a second group of eighteen titles since mid-2006. In total, Sundance is presently marketing thirty-six different titles to the educational marketplace. Attached as Exhibit 7 is a photograph of the spines of the 36 titles presently sold by Sundance under license from Chooseco.

32. Chooseco entered into a licensing agreement with Lean Forward Media LLC ("LFM") of Los Angeles, California for the creation and release of interactive DVD's based upon certain books in the CHOOSE YOUR OWN ADVENTURE series. The LFM DVD was widely featured by Quaker Oats on approximately eighteen million boxes of Life cereal in the period from mid-August 2006 through October 2006. Attached as Exhibit 8 is a photograph of the Life cereal box showing CHOOSE YOUR OWN ADVENTURE prominently featured thereon along with the side panel showing attribution of the CHOOSE YOUR OWN ADVENTURE trademark to Chooseco. Attached as Exhibit 9 is a photograph of the DVD packaging prominently showing CHOOSE YOUR OWN ADVENTURE.

33. Chooseco is actively in negotiations for the sale of products based upon the books in the CHOOSE YOUR OWN ADVENTURE series in variety of different markets and mediums. Many of the areas presently being explored are television and theatrical rights and similar entertainment opportunities as well as the rights to make action figures and the like. Chooseco is also working to implement down-loadable and interactive single and multi-player gaming on the Internet. Chooseco views its prospects for future development of the CHOOSE YOUR OWN ADVENTURE brand on the Internet to be pivotal in its long-range development plans for the highly innovative, well

regarded and “safe” interactive content that it owns and has the ability to further develop and exploit

34. Defendants are collectively and cooperatively engaged in an advertising campaign titled CHOOSE YOUR ADVENTURE promoting and selling JEEP Patriot vehicles. In connection with the CHOOSE YOUR ADVENTURE campaign, Defendant DaimlerChrysler has utilized its domain *patriotadventure.com*. The starting page of that website can be seen in the attached Exhibit 10. At that domain, Defendant DaimlerChrysler provides three different paths of entertainment:

- a. The Way-Beyond Trail – “A Really, Really Interactive Film” prominently displaying CHOOSE YOUR ADVENTURE. See Exhibit 11. In each scene, CHOOSE YOUR ADVENTURE is prominently displayed. At the end of some of the scenes, the film characters look at the person on the screen and ask what do you want to do next and the user is confronted with one to three choices to direct the story. This is an attempt to utilize a similar format that is employed in the CHOOSE YOUR OWN ADVENTURE books but without the compelling choice points expected in CHOOSE YOUR OWN ADVENTURE. The story also includes inappropriate clips for teenage and under children, including a scene where one of the characters travels over a river on a “zip line” naked. See Exhibit 12.
- b. The Patriot Factor – “An interactive comic book that you can help write!” The second path provides a means for JEEP and Marvel (of comic book fame) to promote the JEEP Patriot around an interactive comic book that

is developed by the users of the website as shown in Exhibit 13. The essence of this portion of the website is to provide a framework for story development which is highly controlled and allowing “You decide where the story goes!” as can be seen in Exhibit 14.

- c. The third path available from the *patriotadventure.com* takes the website user to the main JEEP web page which is obviously used to sell JEEP vehicles. See Exhibit 15.

35. Attached as Exhibit 16 is the blog listing: <http://blog.clickz.com/070315-145123.html> which is titled “Choose Your Own Adventure: Jeep Patriot Edition” and the blog starts with: “It was probably inevitable that someone would take the faddish Choose Your Own Adventure books concept and apply it to online video.”

36. Attached as Exhibit 17 is the blog listing from <http://www.joeyinteractive.com/blog/> which is titled Choose Your Own Adventure (March 19th 2007) and states: “Someone has finally taken the faddish Choose Your Own Adventure books concept and applied it to online video. That someone is Jeep, who along with Organic has created a fun microsite that let’s you guide the decisions of a band of four friends on a backwoods treasure hunt starring its Patriot model.”

37. Both Exhibits 16 and 17 show that the blog writers automatically inserted the “own” into the title of their articles demonstrating that there is an immediate association by the writer with CHOOSE YOUR OWN ADVENTURE books by making a specific reference to the books themselves and titling their stories as CHOOSE YOUR OWN ADVENTURE despite the fact that Defendants are calling their advertising campaign CHOOSE YOUR ADVENTURE.

38. An article appeared in the Detroit News on March 14, 2007 with the title “Jeep Patriot Internet, TV ads try to capture 'cool'” wherein they state that the target audience for the CHOOSE YOUR ADVENTURE campaign are “young buyers, 23 to 30 years old, with active lives.” See Exhibit 18.

39. PR Newswire is a well-known service on the Internet for companies to distribute press releases quickly and efficiently. On March 13, Defendant DaimlerChrysler issued a press release with the title: “An Offer to 'Choose Your Adventure' and an Online Interactive Film Drive the Marketing Campaign for the All-New 2007 Jeep(R) Patriot” with the sub titles of: “* Unique film helps viewers experience the features and capabilities of the Jeep Patriot * TV spots, print ads and online ads are among other elements launching March 15* 'March Madness' media will play a big role in the campaign.” The news release, among other things discusses the various different types of advertising in the CHOOSE YOUR ADVENTURE media campaign, which is stated to include Internet, print, and television advertising for the JEEP Patriot. See Exhibit 19.

40. In addition to the Internet based advertising as demonstrated in Exhibits 10 through 15, Defendants are advertising and using CHOOSE YOUR ADVENTURE in print, radio and television advertisements as discussed in both the PR Newswire and Detroit News articles discussed above. One such television advertisement can be found at http://wm.world.mii-streaming.net/media/convergent/dcstudios/VIDEO/2007/mar/patriot_wolf.wmv wherein the end of the advertisement states “Choose Your Adventure at *patriotadventure.com*”.

41. A *youtube.com* page has been established for comments about this advertising campaign as shown in Exhibit 20. (http://www.youtube.com/watch?v=4_6kuEtEMEO, can also be found by searching youtube choose jeep in google.) The initial comment for the page makes a direct reference to CHOOSE YOUR OWN ADVENTURE and further comments on the page include: “wow. makes no sense. i checked out the website too . . . really bad CYOA videos. also, looks like a ripoff of the Mimi and Flo Show website.” The video clip of the advertisement concludes with: “JEEP Patriot. Starting at \$14,985. Choose Your Adventure at *patriotadventure.com*”

42. As can be readily seen in the foregoing exhibits Defendants are using CHOOSE YOUR ADVENTURE. Extensive advertisement of CHOOSE YOUR ADVENTURE is found on the Internet and at the sites shown in the attached exhibits demonstrating that these sites are available for viewing in the State of Vermont.

43. The use of CHOOSE YOUR ADVENTURE by Defendants is virtually identical to Chooseco’s trademark CHOOSE YOUR OWN ADVENTURE except for the omission of “own”. When encountering CHOOSE YOUR ADVENTURE, consumer’s as shown in the “blog” and “youtube” examples above will readily associate the mark with CHOOSE YOUR OWN ADVENTURE by automatically inserting the “own” since it is clearly implied by the usage of CHOOSE YOUR ADVENTURE by Defendants. Exhibits 16, 17 and 20 demonstrate the automatic association of the Defendant’s CHOOSE YOUR ADVENTURE advertising campaign with Chooseco’s CHOOSE YOUR OWN ADVENTURE trademark as well as “cyoa” to refer to CHOOSE YOUR OWN ADVENTURE.

44. Immediately upon Chooseco learning of Defendants' adoption and use of CHOOSE YOUR ADVENTURE, Defendant's counsel on March 19 contacted each of the Defendants directly in an effort to resolve the disputes alleged in the within complaint, and as of this date have not received a substantive reply to the infringement allegations alleged herein.

45. Defendants have knowingly and willfully adopted CHOOSE YOUR ADVENTURE for promotional activities despite full knowledge of the existence and registration of CHOOSE YOUR OWN ADVENTURE by Chooseco.

46. Defendants have performed the aforementioned acts without permission or authority from Chooseco and without legitimate license to reproduce, promote, manufacture, offer for sale, sell and/or distribute products or engage in such promotional activities.

47. Upon information and belief, unless enjoined by this Court, Defendants intend to continue their course of conduct and wrongfully reproduce, promote, manufacture, offer for sale, sell and/or distribute products or engage in promotional activities utilizing CHOOSE YOUR ADVENTURE despite Chooseco's ownership of CHOOSE YOUR OWN ADVENTURE. As a direct and proximate result of the acts of Defendants alleged herein, Chooseco suffers irreparable damage and injury. Chooseco may have no adequate remedy at law to redress the injuries Defendants have caused and will continue to cause by their conduct. Chooseco will continue to suffer irreparable damage, injury, and lost profits unless this Court enjoins Defendants.

FIRST CLAIM FOR RELIEF
(Federal Trademark Infringement)
(15 U.S.C. § 1114)

48. Chooseco restates and incorporates the Allegations of Paragraphs 1 through 47 of this Complaint as if fully set forth herein.

49. Chooseco is the owner of the trademarks set forth in Paragraph 25, and the Federal Trademark Registrations identified in Paragraphs 25.a. through 25.c. of this Complaint. The CHOOSE YOUR OWN ADVENTURE trademarks have acquired substantial goodwill and secondary meaning.

50. In addition to the trademark registrations set forth in Paragraph 25, Chooseco has actively engaged in and developed products and services, including without limitation: clothing and entertainment all bearing CHOOSE YOUR OWN ADVENTURE. Chooseco's right to the exclusive use of its trademark for CHOOSE YOUR OWN ADVENTURE in the foregoing categories is established through its priority of right by filing trademark applications in the United States Patent and Trademark Office as shown by the pending applications set forth in Paragraph 25 of which the entertainment services mark in class 41 and the clothing mark in class 25 will issue into registration in due course.

51. In addition to the trademark registrations set forth in Paragraph 25, and the applications for registration which will issue shortly, Chooseco is actively engaged in the development of additional products, including without limitation: toys, bearing CHOOSE YOUR OWN ADVENTURE. Chooseco's right to exclusive use of its trademark for CHOOSE YOUR OWN ADVENTURE in the foregoing categories is established through

its priority of right by the filing of a trademark application in the United States Patent and Trademark Office as shown by the pending application set forth in Paragraph 25.

52. Defendants have adopted and are using CHOOSE YOUR ADVENTURE in a manner that is likely to cause confusion, is causing confusion, mistake and deception among the general purchasing public as to the origin and affiliation of Defendants with Chooseco. Defendants are likely to deceive the public into believing that the CHOOSE YOUR ADVENTURE advertising and promotion originates from, is associated with, or is otherwise authorized by Chooseco, all to the damage and detriment of Chooseco's reputation, goodwill, and profits.

53. Defendants have unlawfully and wrongfully derived, and will continue to unlawfully and wrongfully derive, income and profits from these infringing acts, and Chooseco has sustained and will continue to sustain substantial injury, loss and damage in an amount according to proofs at the trial of the within suit.

54. Defendants use of one or more of Chooseco's trademarks on or in connection with the sale of products and promotion of its JEEP vehicles constitutes willful and deliberate infringement of Chooseco's trademarks, without authorization or consent in violation of §32 of the Lanham Act, 15 U.S.C. §1114.

55. Defendants' acts of willful infringement have caused and will continue to cause Chooseco irreparable harm and injury to its goodwill and reputation unless this Court enjoins such conduct. Chooseco may have no adequate remedy at law. Thus, Defendants should be restrained and enjoined pursuant to 15 U.S.C. §1116.

56. Because of Defendants activities, Chooseco has been damaged in an amount to be ascertained at the trial of the within suit.

SECOND CLAIM FOR RELIEF
(Federal Trademark Dilution)
(15 U.S.C. § 1125(c))

57. Chooseco restates and incorporates the Allegations of Paragraphs 1 through 56 of this Complaint as if fully set forth herein.

58. Chooseco's trademarks are "famous marks" within the meaning of §43(c) of the Lanham Act, 15 U.S.C. §1125(c)(1) and have been famous marks prior to Defendants' conduct as alleged herein.

59. Defendants distribution, sale and offer for sale in commerce of products and promotion of its JEEP vehicles through extensive national advertising in all available medias to the same demographic market as employed by Chooseco dilutes the distinctive quality of Chooseco's trademarks and was done with the willful intent to trade upon Chooseco's reputation and to cause dilution of Chooseco's trademarks.

60. Defendants continuing distribution, sale and offer for sale in commerce of products and promotion of its advertising campaign is being done with notice and full knowledge that such activities are not authorized or licensed by Chooseco.

61. Defendants' aforesaid acts are in knowing and willful violation of Chooseco's rights under §43(c) of the Lanham Act, 15 U.S.C. §1125(c).

62. Chooseco may have no adequate remedy at law, and if Defendants' activities are not enjoined, Chooseco will continue to suffer irreparable harm and injury to its goodwill and reputation. Defendants should be restrained and enjoined pursuant to 15 U.S.C. §1116.

63. Because of Defendants activities, Chooseco has been damaged in an amount to be ascertained at the trial of the within suit.

THIRD CLAIM FOR RELIEF
(Unfair Competition and False Designation of Origin)
(15 U.S.C. § 1125(a))

64. Chooseco restates and incorporates the Allegations of Paragraphs 1 through 63 of this Complaint as if fully set forth herein.

65. Defendants are manufacturing, distributing, selling and offering for sale in commerce products and promoting its JEEP vehicles bearing unauthorized reproductions of trademarks virtually identical to Chooseco's trademark.

66. By deliberately and willfully using trademarks virtually identical to Chooseco's trademark, Defendants have consciously and deliberately sought to capitalize on the distinctive quality and fame of Chooseco's trademark and have intended to capitalize upon and profit by consumer confusion they have created.

67. Defendants' unlawful, unauthorized and unlicensed manufacture, offer for sale and sale of products and promoting its CHOOSE YOUR ADVENTURE advertising campaign creates the express and implied misrepresentation that the products and the vehicles originates from, is associated with, or is otherwise authorized or endorsed by Chooseco, all to the damage and detriment of Chooseco's reputation, goodwill and sales.

68. Defendants conduct as alleged is deliberate and willful, is likely to cause confusion, will injure Chooseco's reputation unless enjoined, and constitutes a false designation of origin in violation of §43(a) of the Lanham Act, 15 U.S.C. §1125(a).

69. Defendants wrongfully and unlawfully derived, and will continue to wrongfully and unlawfully derive, income, profits, and benefits from these acts of false designation of origin, and false representation. Chooseco has sustained, and will continue to sustain substantial injury, loss, and damage.

70. Defendants' acts have caused and will continue to cause Chooseco irreparable harm and injury to its goodwill and reputation unless restrained by this Court. Chooseco may have no adequate remedy at law. Defendants should be restrained and enjoined pursuant to 15 U.S.C. §1116.

71. Because of Defendants activities, Chooseco has been damaged in an amount to be ascertained at the trial of the within suit.

FOURTH CLAIM FOR RELIEF
(Unfair Competition – Vermont Common Law)

72. Chooseco restates and incorporates the Allegations of Paragraphs 1 through 71 of this Complaint as if fully set forth herein.

73. Chooseco has built up valuable goodwill in Chooseco's CHOOSE YOUR OWN ADVENTURE trademark.

74. Defendants' use of CHOOSE YOUR ADVENTURE is likely to and does permit Defendants to passing off their goods and services as those of, affiliated with, or otherwise authorized by Chooseco, all to the detriment of Chooseco and unjust enrichment of Defendants.

75. Defendants, with full knowledge of the fame of Chooseco's trademark, intend to and did trade upon the goodwill associated with Chooseco's trademark and have misled and will continue to mislead the public into assuming a connection exists between Chooseco and Defendants, when no such connection exists.

76. Defendants' actions amount to deception and misappropriation of the exclusive property owned by Chooseco.

77. Defendants' unauthorized use of Chooseco's trademark has caused and will continue to cause Chooseco damage by tarnishing the desirable reputation and image associated with Chooseco and Chooseco's trademark.

78. Defendants have unlawfully derived income and profits from their activities and will continue to derive income and profits from their acts of unfair competition, and Chooseco has sustained and will continue to sustain, substantial injury, loss, and damage.

79. The acts of Defendants, which permit and accomplish confusion, mislead and deceive the public as to the source of Defendants goods and services, falsely suggests a connection with Chooseco, constitutes acts of unfair competition with Chooseco in violation of Vermont law. These acts have caused and will continue to cause Chooseco irreparable harm unless enjoined by this Court. Chooseco has no adequate remedy at law. Defendants should be restrained and enjoined pursuant to Vermont law.

80. Because of Defendants activities, Chooseco has been damaged in an amount to be ascertained at the trial of the within suit.

FIFTH CLAIM FOR RELIEF
(Conspiracy)

81. Chooseco restates and incorporates the Allegations of Paragraphs 1 through 80 of this Complaint as if fully set forth herein.

82. Upon information and belief, Chooseco believes that Defendants knowingly and willfully conspired and agreed among themselves to infringe the CHOOSE YOUR OWN ADVENTURE trademark owned by Chooseco.

83. Upon information and belief, all Defendants knew of, discussed, assisted, and cooperated with each other, and otherwise participated in or approved of the unlawful acts set forth above. All Defendants knew these acts were wrongful and in violation of trademark law. All Defendants knew these acts damage Chooseco. The Defendants ratified and adopted the acts of each other.

84. Upon information and belief, all Defendants did the acts and things herein alleged pursuant to, and in furtherance of, the conspiracy.

85. All Defendants are thusly each fully responsible for and liable for the acts of each other and jointly and severally responsible for the wrongful and tortious acts of each other, which have caused, and continue to cause an aggregate injury and damage to plaintiffs.

86. All Defendants' actions proximately resulted in damages to Chooseco in an amount to be proven at trial.

87. All Defendants' actions of conspiracy have caused and will continue to cause Chooseco irreparable harm and injury to its goodwill and reputation unless this Court enjoins such conduct. Chooseco has no adequate remedy at law. Defendants should therefore be restrained and enjoined pursuant to Vermont Law.

PRAYER FOR RELIEF

WHEREFORE, Chooseco prays as follows:

1. That the Court issue a temporary and permanent injunction order restraining, enjoining, and prohibiting Defendants, their agents, servants, directors, employees, officers, attorneys, distributors, retailers, successors, and assigns, and all persons, firms, corporations and legal entities acting in concert with, or in conspiracy with, or affiliated with, or in participation with Defendants or on Defendants' behalf from:

a. Using Chooseco's property, including without limitation CHOOSE YOUR ADVENTURE on or in connection with the advertisement of JEEP vehicles including in all advertisements, including but not limited to electronic, television, radio and print, promotional activities, by the Internet, on brochures, or any colorable imitation of CHOOSE YOUR OWN ADVENTURE in connection with the manufacturing, printing, distribution, advertising, offering for sale, or selling any products or services or other items not the products of Chooseco, or in any manner likely to cause others falsely to believe that Defendants' products and services are connected with Chooseco;

b. Passing off, inducing, or enabling others to sell or pass off any products or services which are not authorized, licensed or sold by Chooseco;

c. Committing any other acts calculated to cause purchases to believe that Defendants' products and services are products and services offered or sold by Chooseco or its valid licensees;

d. Shipping, delivering, distributing, transferring, returning, holding for sale, destroying, or otherwise moving, storing, or disposing of any products, advertisements, promotional materials, offers for sale, and documents, or other items bearing or used in connection with the unauthorized use of CHOOSE YOUR ADVENTURE by Defendants;

e. Transferring, moving, returning, destroying or otherwise disposing of any equipment, apparatus, computer recorded media, business records or documents all relating or used in connection with the unauthorized use of CHOOSE YOUR ADVENTURE by Defendants;

2. That the Court issue an order requiring Defendants to make all reasonable efforts to retrieve all infringing products from the stream of commerce, including but not limited to products in the distribution channel, distributors, retailers, agents, or employees and deliver such materials to a place designated by the Court during the pendency of this action;

3. That the Court issue an order requiring Defendants to stop all use of CHOOSE YOUR ADVENTURE by Defendants, take down all Internet websites featuring or advertising or otherwise using CHOOSE YOUR ADVENTURE, and to otherwise cease all advertising and promotional efforts of CHOOSE YOUR ADVENTURE by Defendants

4. That the Court grant Chooseco an equitable accounting of Defendants' profits and award Chooseco its attorneys' fees and costs, plus its damages or Defendants' profits, whichever are greater, arising from Defendants' trademark infringement, false designation of origin, unfair competition, and trademark dilution, such damages or profits

to be trebled pursuant to 15 U.S.C. §1117 and otherwise by reason for the willfulness of Defendants' acts;

5. That Chooseco be awarded damages arising from Defendants' conspiracy to commit trademark infringement and unfair competition;

6. That the Court award Chooseco its costs of suit incurred herein; and

7. That the Court grant such other and further relief as it deems just and proper.

PLAINTIFF, CHOOSECO LLC, DEMANDS TRIAL BY JURY ON THOSE ISSUES SO TRIABLE

Dated: March 27, 2007

Respectfully submitted,
GORDON E. R. TROY, PC

By: 

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Attorney for Plaintiff, Chooseco LLC

VERIFICATION

I, R. A. Montgomery, a citizen of the United States and a resident of the State of Vermont, am a managing member of Chooseco, LLC, a Vermont Limited Liability Company. I have read the foregoing Verified Complaint For Damages And Injunctive Relief and declare under penalty of perjury under the laws of the United States of America that the foregoing factual averments are true and correct to the best of my knowledge and belief.

Dated: March 27, 2007

Chooseco LLC


R. A. Montgomery, Managing Member